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FEDERAL COMMUNICATIONS COMMISSION
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J. Ruffin

May 14, 1997

Chairman Reed Hundt
FCC
Washington, D.C.

Re: Pending Spectrum Allocations
Frozen in Comparative Hearing

Dear Chairman Hundt,

I realize this is not the standard channel for presenting comments and arguments with respect to FCC policies. However, revision of the comparative process has been "discussed" in accepted "channels" for years..all to no avail. Perhaps now is the time for a direct approach.

All of us, broadcasters and regulators, would like to see this situation resolved in the best interests of the industry. And who could evaluate "best interest" better than a broadcaster directly effected by this stalemate.

Please take the time to review the enclosed. I think you will find my arguments logical, my suggestions sound.

Best personal regards,

KDC, INC./WLKK RADIO

Kathleen DeCapua

Kathleen De Capua
Owner

enc

cc: Blair Levin

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FEDERAL COMMUNICATIONS COMMISSION
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May 14, 1997

Attorney William Kennard
F.C.C.
Washington, D.C.

Re: Resolution of Pending Allocations Frozen in Comparative
Hearing.

Dear Attorney Kennard,

I have been following this issue for years with more than a passing interest. I have a pending application for an FM allocation frozen in place and awaiting either FCC or legislative action.

Thank you for not giving up on the idea that these allocations should be awarded through some type of comparative process. I, too, would like to see new frequencies in the hands of broadcasters rather than financial groups able to out bid us.

While waiting for resolution I have turned my frustration towards studying the issue...FCC rulemaking, court challenges, articles in trade publications, etc. A recent article in Radio & Records quotes you as working on comparative criteria that would be "objective and easily administered".

Well, perhaps you could use another perspective on this issue. Please, at least read and consider this unsolicited advice. I have also enclosed a copy of my correspondence with Senator John McCain. Getting to him seems to be key to retaining some form of selection process.

Best personal regards,

KDC, INC./WLKK RADIO

Kathleen De Capua
Owner

cc: John Rifer

OBJECTIVE CRITERIA FOR "COMPARATIVE" SELECTION

1. **PIONEER PREFERENCE:** Why? For starters it is one of the criteria mentioned at length in the "FCC's Notice of Proposed Rulemaking, 3/12/92". The NAB concurred that it should be included in the process and even filed in support of inclusion. ("Comments in Support of Petition for Rule Making", 6/25/91.) Since this criterion has been generally accepted but long neglected it deserves priority.

Pioneer applicants also deserve preference to weight the investment they have made upfront. Engineering studies and legal fees to create the allocation.

Favoring the "pioneer" has legal precedence in common law. It's the American way...staking a claim by being the first one there. A reward for "superior skill or ingenuity".. the basis of our economic system.

2. **AM STAND ALONE:** - [Greater weight for Daytime-Only] Preference for owners of day time only AM frequencies is also cited in rulemaking opinions. It is widely accepted that these operators are at a competitive disadvantage. According to industry data..so, too, are AM's in general.

In addition to leveling the playing field, economically, for market revenue. This preference would also give an advantage to local broadcasters. Who else would find these stations even marginally profitable? "Mom and Pop" can still make it in a small market..but for how much longer?

Preference to those already in the market would actually enhance diversification. Strengthening current broadcasters would discourage them from selling out to their competitors.

Minority preference is no longer a big issue but these broadcasters usually start out with the frequencies nobody else wants..AM. That's also how "broadcasters" move into ownership...an AM daytimer can be had for a "severance pay" investment.

3. **REINSTATE THE THREE YEAR RULE:** This was a good policy that discouraged speculation. It also provided for applicants that actually wanted to be broadcasters. Once again, you favor the broadcaster over the investor and you get more diversification, more local involvement in programming.

AN EXAMPLE: A PENDING ALLOCATION IN ERIE PENNSYLVANIA:

KDC, INC. - (my application) filed by business partners/husband and wife, Kathleen and Timothy De Capua. Currently own and operate, WLKK AM/Erie..a full service News/Talk Radio Station. No other broadcast interests [sold our "starter station"...an AM Daytimer in Youngstown, Ohio]. Both of us work full time at the station, raise a family in Erie and devote time to civic involvement.

We discovered that Canadian radio deregulations made a "drop in" possible in our market area. Our investment in engineering studies and legal fees for this allocation drew two challenges. As a result there are now three frequencies. One is on air, two are pending. Mine and one in Astabula, Ohio. [Palmer is applicant for both pending allocations]

THE OTHER APPLICANTS:

Fairview Radio, Inc. - primary stock holder, Rick Rambaldo, who already owns two FM stations that serve the Erie market (WRKT/WRTS). Combined they already get 23% of radio revenue in the market. Rambaldo lives in Rochester, N.Y.

Antoinette K. Palmer - lives outside of Cleveland, Ohio. No broadcast background...all monies to be provide by her father, John Kanzius, part owner and general manager of WJET-FM & WJET-TV/Erie. They also have an LMA relationship with WFGO. [West Erie Broadcasting]

West Erie Broadcasting Corp - Richards and Wiley have joined forces..they were competing applicants for the 80/90 FM dropped into Erie. Nedra and her husband, Roger were the high bidder for that allocation that became WFGO. Nedra Richards lives in Erie and is the president of West Erie Broadcasting. Ben Wiley is local and a minority.

MBS Communications - They have three pages of other filings attached to their application. James Martin, Jr., Arthur Belendiuk, and Gary Smithwick seem to be in the business of filing these competing applications.

Christopher J. Wegman - His address is listed as McAllen, Texas his money comes from an individual in New Orleans. Speculator, front man, or broadcaster?

John McWilliams - lives just outside of Erie County. Did his own engineering, filed his own application and proposes to build and operate the FM allocation for \$65,000.

SUMMARY:

1). Evaluate comparative criteria and the entire spectrum allocation issue favoring the vast majority of broadcasters. Those outside the major radio markets.

Pennsylvania has two major markets; Philadelphia [5] and Pittsburgh [20]. Six other cities are ranked as medium to very small markets. These ranked markets account for 138 or 32% of all the radio stations in Pennsylvania.

2). Allow the auction provision to apply to the top radio markets. It would indeed generate significant government revenue. Besides, broadcast operations in these markets is so costly that only the strongest of financial competitors can gain entry or succeed.

3). Retain control over allocations in the smaller markets. Encouraging diversity and local control will preserve and possibly create broadcast employment. These local dollars generated through operations would exceed the revenues returned to the government via auction.

4). Compromise on a "buy-out" of pending allocations on a priority basis. Offer a first right of refusal to the applicant that best fits the new criteria. Pending applicants for allocation are either going to profit or have to pay off to settle.